

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

BRIAN A., ET AL.	)	
	)	
Plaintiffs	)	Civ. Act. No. 3:00-0445
	)	Judge Todd J. Campbell
v.	)	
	)	
PHIL BREDESEN, ET AL.	)	
	)	
Defendants	)	
	)	

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**STIPULATION OF SETTLEMENT OF CONTEMPT MOTION**

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WHEREAS the plaintiffs have filed a motion for contempt against defendants seeking certain remedial relief; and

WHEREAS the State of Tennessee acknowledges that it has not fulfilled a number of terms of the Settlement Agreement approved by the Court on July 27, 2001 (the "Settlement Agreement"); and

WHEREAS the parties acknowledge that an implementation plan ordered by the Court in the manner defined in this Stipulation is necessary to ensure that the terms of the Settlement Agreement are fulfilled; and

WHEREAS the parties wish to resolve the contempt motion on the following terms and conditions;

The parties therefore now stipulate and agree as follows:

### **Reaffirmation of the Initial Settlement**

1. The parties reaffirm their commitment to the Settlement Agreement, which shall remain in full force and effect except as explicitly provided herein. Nothing in this Stipulation shall be construed to expand the application of the Settlement Agreement, this Stipulation, or any other agreement, beyond the class as defined in the Settlement Agreement.

### **The Development of an Implementation Plan**

2. In order to further Defendants' achievement of the Settlement Agreement, Defendants agree that the Department of Children's Services ("DCS") will develop and implement a formal Brian A. implementation plan (the "Implementation Plan").

3. The Implementation Plan will establish priorities for action and will structure the sequencing of activities. In each substantive area, the Implementation Plan will clearly delineate what can feasibly be accomplished within reasonable timeframes, who is responsible and accountable for progress, what resources are required, and how progress will be tracked and reported. The Implementation Plan will reflect a well-reasoned judgment about what is likely to be necessary to achieve both short-term and long-term objectives. It will entail a coherent set of interrelated and mutually reinforcing strategies for system improvement. The plan will contain sufficient detail so that it is not simply a statement of sincere commitment to achieve the desired objectives, but is rather a blueprint for carrying out the many reforms called for in the Settlement Agreement.

4. The Implementation Plan will address the key substantive areas set forth in paragraph 5 below, with each section of the Implementation Plan setting forth:

- a. goals;

- b. strategies;
  - c. action steps;
  - d. benchmarks;
  - e. responsibilities; and
  - f. timelines.
5. The Implementation Plan will include the following issues:
- a. Leadership and Management
    - (1) Developing, recruiting, and designating a leadership and management team with sufficient authority, skills and child welfare expertise to champion the reform agenda; and
    - (2) Redesigning the Regional-Central Office relationship in ways that clarify the structure, resource authority, and management expectations of all DCS managers and that create clear lines of authority and accountability for the work.
  - b. Creating and Sustaining a Sufficient and Well-Qualified Workforce
    - (1) An ongoing plan for the recruitment and hiring of qualified staff;
    - (2) Implementing an ambitious and well-resourced training program that will provide the pre-service and in-service training to build the skills needed to implement the new practice model at all levels of DCS;
    - (3) Improving skills and responsibilities of supervisory and managerial staff;
    - (4) Developing staff retention strategies, including improvements in staff compensation; and
    - (5) Developing an accountability system for staff at all levels.
  - c. Child and Family Team Meetings
    - (1) Implementing Child and Family Team Meetings as an essential practice strategy of the reform effort;

- (2) Developing an investigative and assessment process for children and families that is integrated with the child and family team meeting process;
- (3) Ensuring that workers identify, recruit and involve supportive family and community members on teams;
- (4) Developing an approach to adoption services that is integrated with the child and family team meeting process;
- (5) Developing a clear plan for required contact of case managers with child and family, and a management system that will track performance in this critical area, by office, supervisory unit, and individual case manager; and
- (6) Developing a clear plan and adequate resources for maximum appropriate contact of children with their parents, siblings and relatives.

d. Child Protective Services

- (1) Improving the timeliness and quality of investigation of abuse and neglect through a review and modification of current policy and practice and the retraining of staff performing investigations, consistent with the practice model;
- (2) Improving services and supports to prevent recurrence of maltreatment and prevent entry/reentry into foster care; and
- (3) Developing an approach to placement decisions and processes that is integrated with the child and family team meeting process.

e. Placement Process

- (1) Developing placement processes to ensure that children are routinely placed in appropriate settings, as required by the Settlement Agreement;
- (2) Developing a plan to adequately assess children's needs when they come into care; and
- (3) Developing systems to ensure that all placement decisions are made by adequately trained and supervised DCS staff.

f. Foster, Kinship, and Adoptive Home Development and Support

- (1) Developing strategies to substantially improve supports for current foster and adoptive parents and relative caregivers;
- (2) Developing strategies to recruit a significant number of additional resource families, primarily in the communities from which the largest number of children are entering foster care, with a special emphasis on families interested in accepting teenagers and special needs children, and for increasing as appropriate the routine use of relatives when children must come into care;
- (3) Developing strategies to more effectively and frequently use child-specific recruitment efforts for foster and adoptive placements; and
- (4) Developing strategies to improve the adoption process and integrate it into the rest of the agency's work.

g. Resource Development

- (1) Clarifying roles and responsibilities of private providers serving children in the plaintiff class;
- (2) Implementing the continuum study recommendations;
- (3) More effectively using flexible funds, including needs assessment dollars and the evaluation of the use of flexible funds by the CSA's.
- (4) Improving relationships with and accountability for CSA's delivering services to children and families; and
- (5) Maximizing federal revenue.

h. Data Management

- (1) DCS will develop a data management plan focused on producing the data necessary to
  - (a) Improve data integrity;
  - (b) Support and monitor the implementation plan;
- (2) Evaluate progress;
- (3) Ensure that management data is used effectively to inform and improve practice, including:

- (a) Data about the outcomes achieved by the Department as a whole and by each regional office, and
- (b) Data about key process indicators (e.g., the timely initiation and completion of CPS investigations) with sufficient detail (i.e., for each supervisory unit and worker) to permit this information to be used effectively as a management tool.

i. Quality Assurance (“QA”)

- (1) Developing a comprehensive plan for quality assurance processes that includes:
  - (a) the capacity for analyzing and routinely using management and outcome data;
  - (b) a process for reviewing and assessing quality of service delivery;
  - (c) targeted case reviews;
  - (d) sufficient internal capacity (qualified staff and resources for QA functions);
  - (e) clear mechanisms for using the results of quality assurance for policy and procedure modification and resource development and planning;
  - (f) maximizing the utility of the external quality service review process (C-PORT); and
  - (g) ensuring that the quality of service provided by private agencies is assessed in the same fashion and with the same standards as those used for direct DCS services.

**Process for Development of the Implementation Plan**

6. No later than three weeks following the entry of this Stipulation by the Court, representatives of DCS will meet with the Technical Assistance Committee (“TAC”) to begin development of the Implementation Plan. DCS will dedicate 3 to 5 senior staff full time to the development of the Implementation Plan, and the planning process will be advised and supported as needed by the TAC. Ultimate responsibility for the

development and content of the Implementation Plan will remain with the Commissioner of DCS. The planning process will be completed, and the Implementation Plan provided to the TAC and plaintiffs, within 90 days of this initial meeting. This period may be extended once by the TAC for a period not to exceed an additional 60 days.

7. Plaintiffs will have regular opportunities to provide input into the planning process and the plan itself through periodic meetings with State representatives and the TAC.

**Process for Approval of the Implementation Plan**

8. At the completion of the planning process, DCS will provide the proposed Implementation Plan to the plaintiffs and the TAC. There will follow a 30-day period of consultation and comment involving the TAC and the parties, at the conclusion of which DCS shall deliver its “final initial” version of the plan to the TAC. The TAC will then, within 10 days of receiving the proposed plan from DCS, either:

- a. endorse the proposed Implementation Plan; or
- b. suggest changes in the proposed Implementation Plan, which changes the State must adopt or reject within 10 days.

9. If the TAC endorses DCS’ proposed Implementation Plan, the parties will promptly submit that part of the Implementation Plan described in paragraph 4.a. and 4.b. of this Stipulation to the Court for the Court’s approval and only that part will be enforceable pursuant to paragraph 17.

10. If the State rejects the TAC’s suggested changes in the Implementation Plan, the parties agree that both plans in their entirety shall be submitted to the Court and the Court has authority to determine if the TAC-recommended plan or the State’s proposed plan will be implemented by the State, or the Court shall fashion appropriate alternative

relief. Whichever plan is selected by the Court, only that part of the Implementation Plan described in paragraph 4.a. and 4.b. in this Stipulation will be enforceable pursuant to paragraph 17.

11. Defendants shall be obligated to implement all of the provisions of the Implementation Plan. However, plaintiffs shall only be entitled to bring enforcement proceedings with regard to defendants' failure to implement goals or strategies as set forth in paragraph 4.a. and 4.b.

**Process for Implementation of the Plan**

12. DCS will be fully responsible for carrying out the Implementation Plan. If the TAC endorses the Implementation Plan or if it otherwise so chooses, it will provide technical assistance and advice to the State for a term of at least 18 months.

13. The parties are aware that changes in the Implementation Plan may be necessary after it is made operational. Therefore, either party or the TAC can request in writing a discussion of the need for changes (based upon changes in circumstances, lessons learned during implementation, failure to implement parts of the plan in a timely manner, or for any other good cause). The TAC will establish a process for timely evaluation of the need for such changes (that will include consultation with the parties) and shall have the authority to make any such changes. Any changes to that part of the Implementation Plan described in paragraph 4.a. or 4.b. will be submitted promptly to the Court for approval.

14. The parties agree to work cooperatively with the TAC and to seek to maximize its effectiveness. The TAC may utilize such other staff and/or consultants as it deems necessary and appropriate to complete its tasks. Throughout the planning process



and the 18-month assistance period the TAC will make itself available to meet periodically with plaintiffs.

### **Monitoring**

15. Section XV of the Settlement Agreement is hereby modified solely in the following manner and solely for the period following the execution of this Stipulation, during the period referred to in paragraph 6 above, and for an 18 month period following the court approval of an Implementation Plan, as described in paragraph 9 and 10, as provided below in this Monitoring section. All other provisions of Section XV of the Settlement Agreement will continue in full force and effect.

16. The TAC will function as the independent monitor, in the place of Sheila Agniel.

17. The TAC shall, prior to the development of the Implementation Plan, provide monitoring necessary to measure defendants' compliance with the Settlement Agreement. This shall include a case record review, to be initiated as soon as practicable, provided however that the TAC, in consultation with the plaintiffs, shall design both the size and scope of the case record review so as to measure those Settlement Agreement provisions that have a significant impact on the plaintiff class members. In addition, the TAC shall receive and to the extent appropriate analyze data and reports from the State that have previously been provided to the Monitor.

18. The TAC shall monitor the defendants' performance under the Settlement Agreement and shall also monitor the extent to which the defendants are implementing the Implementation Plan. The TAC shall develop a monitoring plan no later than 30 days after the finalization of the Implementation Plan pursuant to Paragraph 8 or Paragraph 10.

19. During the planning process and for 18 months thereafter, the costs of providing consultation and advice to the State, and the costs of periodic meetings to carry out this role, will continue to be borne by the Annie E. Casey Foundation (which is supportive of but not a party to this agreement). The costs of the TAC's undertaking of the monitoring function described above will be borne by the State up to the limit currently budgeted.

20. The State agrees to provide the TAC with free access to all individuals within the Department, any successor agencies, and other persons within the Executive Branch, as the TAC deems necessary; to assist the TAC in gaining free access to other stakeholders in the child welfare system (including but not limited to the staff of contract providers); and to provide the TAC with free access to all documents and data it deems relevant to its work. The members of the TAC have agreed to respect the confidentiality of all information related to individually identifiable clients of DCS, subject to applicable law. The members of the TAC have further agreed to respect the confidentiality of any documents that are in draft form or otherwise privileged.

21. All formal reports of the TAC, and the attachments thereto, will be public documents, except that the TAC agrees (as previously noted) that any individually identifiable information (as that term is understood under Tennessee law) and any other confidential information protected from disclosure by law, including without limitation any protected health information and/or individually identifiable health information (as those terms are understood under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”)) will be redacted or otherwise removed from any public report.

22. Prior to the conclusion of the 18 month period described above, the TAC will assist the parties in identifying an independent monitor to fulfill the responsibilities described in Section XV of the Settlement Agreement. The independent monitor shall be chosen by the parties, and all provisions of Section XV will be in full force and effect, except that the name of the new independent monitor shall be substituted for Sheila Agniel.

#### **Enforcement During the Implementation Period**

23. The provisions of the Implementation Plan described in paragraph 4.a. and 4.b. of this Stipulation, and only those provisions, will be separately and independently enforceable by the Court. Plaintiffs further agree that prior to filing any motion seeking judicial remedies for non-compliance with the Implementation Plan, plaintiffs will follow the dispute resolution procedures set forth in Settlement Agreement § XVIII.B.2.a.-c.

24. Plaintiffs agree that for a 12-month period following Court approval of an Implementation Plan they will not seek a finding of contempt or non-compliance against defendants for violations of the Settlement Agreement, unless such violations present significant danger to the safety and well-being of members of the plaintiff class.

#### **Extension of Certain Time Frames**

25. Because of the circumstances described in this Stipulation, certain of the dates in Settlement Agreement §§ XVI. and XVIII. shall be extended as follows:

- a. Period II, which commenced on March 1, 2003, and pursuant to the Settlement Agreement is scheduled to expire on August 31, 2004, shall be extended by 15 months; and
- b. Period III will cover the 18-month period following the expiration of Period II as calculated above.

### **Miscellaneous**

26. In addition to the responsibilities and authority provided for the TAC in this Stipulation, the TAC shall continue to have the responsibilities and authority set forth for it under the Settlement Agreement.

27. In developing and implementing the Implementation Plan, the TAC shall fully consider and incorporate to the extent appropriate the results and recommendations of the Racial Disparities Study issued by Dr. Ruth McRoy and the needs assessment issued July 1, 2002. In order to have an integrated approach to the implementation of the Settlement Agreement, the Implementation Plan shall be the sole implementation plan for the Racial Disparities Study and July 1, 2002, needs assessment.

28. Plaintiffs' Motion for Contempt dated November 20, 2003, is settled as provided herein. Plaintiffs are entitled to fees and costs with regard to their motion and this resultant Stipulation. Those fees and costs will be included in a separate motion for post-judgment monitoring and enforcement activities to be submitted separately to the Court.

### **ATTORNEYS FOR PLAINTIFFS:**

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**APPROVED AND ORDERED BY THE COURT:**

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**United States District Judge**